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August 17, 1999

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Magalie Roman Salas, Secretary
Federal Communications Commission
445 Twelfth Street, S.W., Room TW-A325
Washington, D.C. 20554

Re: CellNet Data Systems, Inc. — Petition for Expedited Relief from MAS
Application Freeze Limited to a Single Customer Commitment
WT Docket No. 97-81

Dear Ms. Salas:

Please find enclosed, on behalf of CellNet Data Systems, Inc., an original and four copies of its "Petition for Expedited Relief from MAS Application Freeze Limited to a Single Customer Commitment" in the above-referenced proceeding.

Should you have any questions regarding this submission, please contact the undersigned.

Sincerely,

WILKINSON BARKER KNAUER, LLP



By: Lawrence J. Movshin
Timothy J. Cooney
Jeffrey S. Cohen

Enclosures

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**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
Amendment of the Commission's Rules)	WT Docket No. 97-81
Regarding Multiple Address Systems)	
)	

To: Chief, Public Safety and Private Wireless Division

**PETITION FOR EXPEDITED RELIEF FROM
MAS APPLICATION FREEZE LIMITED TO
A SINGLE CUSTOMER COMMITMENT**

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August 17, 1999

TABLE OF CONTENTS

SUMMARY	i
I. CELLNET UTILIZES THE 928/952 MHz MAS FREQUENCY BANDS TO PROVIDE ESSENTIAL METER READING AND PUBLIC SAFETY-RELATED SERVICES TO UTILITIES, INCLUDING NSP	3
II. GRANT OF THE REQUESTED RELIEF IS SUPPORTED BY GOOD CAUSE SHOWN	4
A. <u>The Unique Factual Circumstances Associated With CellNet’s Pre-existing Customer Commitment Warrant Limited Relief from the MAS Application Suspension</u>	5
B. <u>Granting Limited Relief Will Serve the Public Interest</u>	6
C. <u>Granting CellNet the Limited Requested Relief Would Not Undermine the Purpose of the Application Suspension</u>	7
D. <u>CellNet Has No Reasonable Alternative to the 928/952 MHz Frequency Bands Under the Commission’s Rules</u>	10
E. <u>Grant of the Requested Relief Would Be Consistent With Past Situations in Which The Commission Has Granted Relief from Application Freezes</u> ..	11
III. CONCLUSION	15

SUMMARY

CellNet Data Systems, Inc. ("CellNet") requests limited relief from the Commission's decision to suspend acceptance of Multiple Address System ("MAS") applications as of July 1, 1999. CellNet seeks authority to apply for five MAS station authorizations in the 928/952 MHz MAS bands so that it can fulfill a pre-existing customer commitment for the expansion of an existing service offering.

Unique circumstances justify Commission grant of the requested relief. In August 1996, CellNet and a major multi-state utility entered into a 15-year agreement through which CellNet currently provides remote meter reading and other information services to specific portions of the utility's service areas and which contemplated near-term expansion of the services. Prior to (and without anticipation of) the July 1, 1999 MAS application freeze, CellNet and the utility customer agreed to expand the contract to cover additional locations in other areas served by the utility, beginning early next year. CellNet's request for relief is limited to the five expansion areas contemplated by this single, pre-existing customer commitment.

Grant of the requested relief would serve the public interest in several ways. It will allow CellNet's utility customer to offer to additional areas the same higher level of service that it currently provides in areas using CellNet technology. As a result of CellNet's network deployments, the utility reaps many public safety benefits, including reductions in the quantity and duration of outages, and an enhanced ability to detect outages, fraud, and theft and to verify the restoration of service. Consumers benefit from the flexible rate programs and the greater efficiency, service enhancements and safety checks made possible through CellNet technology.

Grant of the requested relief also would not undermine the purpose of the application freeze. The applications that are the subject of this petition are not in the least bit speculative. They are the

result of lengthy negotiations with a single, highly reputable customer that started well in advance of the announcement of the freeze and which contemplate the use of tested technology to extend an existing service offering into geographic areas already served by CellNet's customer. Moreover, grant of the requested relief would have no significant effect on the potential MAS spectrum auction. For two of the sites, the frequency bands are highly encumbered so that only CellNet can take practical advantage of the little white space available by short-spacing its own existing system. The other three applications are for comparatively remote areas where significant amounts of spectrum will remain available for potential auction even after grant of the requested relief.

CellNet is left with no reasonable alternative to fulfill its existing customer commitment. In light of the years of research and development and millions of dollars CellNet has invested in designing equipment to operate in the 928/952 MHz MAS bands, no other spectrum alternatives are available to CellNet, especially to fulfill the near-term commitment to its customer.

CellNet's request for limited relief also is supported by ample precedent. In other proceedings granting relief from application freezes, the Commission has distinguished between established incumbents like CellNet, who were allowed to expand their systems incrementally, and speculators who either had no prior authorizations or who may have had authorizations but had not constructed an operational system. The Commission also has granted relief limited to customer commitments pending at the time of the freeze decision. CellNet's petition, limited to a single customer commitment pending at the time the Commission unexpectedly announced the freeze, satisfies all the criteria for limited relief.

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To: Chief, Public Safety and Private Wireless Division

**PETITION FOR EXPEDITED RELIEF FROM
MAS APPLICATION FREEZE LIMITED TO
A SINGLE CUSTOMER COMMITMENT**

CellNet Data Systems, Inc. ("CellNet"), by its attorneys and pursuant to sections 1.41 and 1.925 of the Commission's rules, 47 C.F.R. §§ 1.41 and 1.925, hereby requests limited relief from the decision issued July 1, 1999, by the Federal Communications Commission ("Commission" or "FCC") in which the Commission imposed an immediate suspension or "freeze" on the acceptance of Multiple Address Systems ("MAS") applications filed on or after July 1, 1999.¹

CellNet recently filed comments generally opposing application freezes on private wireless spectrum, explaining that freezes have a serious adverse effect on the business plans of many private licensees who require additional spectrum in order to expand existing service areas or whose licenses require major modification in order to provide more efficient or comprehensive service.² CellNet, however, does not seek broad relief in this petition. Rather, it seeks relief limited to a single

¹ *Amendment of the Commission's Rules Regarding Multiple Address Systems*, WT Docket No. 97-81, *Further Notice of Proposed Rule Making and Order*, FCC 99-101 (rel. July 1, 1999) ("MAS Further Notice").

² *Comments of CellNet Data Systems, Inc.*, WT Docket No. 99-87, Aug. 2, 1999, at 17-19.

customer commitment which had been negotiated prior to the July 1, 1999 announcement of the freeze. Specifically, prior to (and without anticipation of) the commencement of the MAS application freeze, CellNet entered into an agreement with Northern States Power Company ("NSP"), a large Midwestern gas and electric utility company. This agreement contemplated near-term expansion of CellNet's existing coverage of NSP's service area near Minneapolis, Minnesota, and extension of CellNet's coverage of NSP's service areas into several portions of North Dakota. CellNet requests limited relief from the application freeze in order to apply for five MAS station authorizations in the 928/952 MHz bands needed to fulfill this pre-existing customer commitment.³

Unique circumstances not only justify the limited relief requested by CellNet, but CellNet's request meets the standards established by the Commission for a waiver of a Commission rule or policy. Application of the MAS suspension to CellNet at the five identified locations subject to a pre-existing customer commitment would be inequitable, unduly burdensome, and contrary to the public interest. CellNet is left with no reasonable alternative than the relief requested in this petition. Moreover, the limited relief from the application freeze requested by CellNet would not undermine the purpose of the suspension, which is intended to deter speculative applications. The applications which CellNet seeks authority to file are for specific and concrete service requirements of a major Midwestern utility. CellNet respectfully requests the Commission to grant it immediate limited relief from the MAS application suspension.

³ Copies of the FCC Form 415 applications for these stations are enclosed in the attached Appendix.

I. CELLNET UTILIZES THE 928/952 MHz MAS FREQUENCY BANDS TO PROVIDE ESSENTIAL METER READING AND PUBLIC SAFETY-RELATED SERVICES TO UTILITIES, INCLUDING NSP

CellNet, through its various wholly-owned subsidiaries, deploys, owns, and operates MAS networks throughout the service areas of various gas, electric, and water utility companies. These networks are licensed to CellNet under Part 101 of the Commissions's rules in the 928/952 MHz bands and are used by CellNet to provide remote meter reading information services to its utility customers. CellNet utilizes unlicensed Part 15 devices to collect meter data from millions of endpoints (electric, gas or water meters retrofitted with Part 15 transmitters) and transmits the data via MAS facilities to centralized computer systems where the information is further processed by CellNet to provide value-added information services to the utility company.

In order to read data from millions of meters in a given metropolitan area, CellNet has developed MAS technology unique to its information services networks which achieves spectrum efficiencies that vastly exceed any other MAS system. CellNet's MAS architecture is cellular-based, with substantial reuse of the same frequencies within the service area to greatly multiply the number of remotes that can simultaneously utilize the channel.⁴ CellNet currently has 4.3 million endpoint devices under contract, and more than 2.8 million devices on-line.⁵

⁴ CellNet's design allows the deployment of multiple MAS master stations operating on various subchannels, capable of serving up to 200 remote stations per master station, as compared to the minimum of four remotes per master station required by the Commission's rules. Each remote, in turn, can communicate with hundreds of endpoint devices.

⁵ CellNet has contracts or commitments for its information services in the Barberton, OH, Hartford, CT, Indianapolis, IN, Kansas City, MO, Los Angeles, CA, Minneapolis-St. Paul, MN, Pittsburgh, PA, Philadelphia, PA, San Diego, CA, San Francisco, CA, St. Louis, MO, and Seattle, WA metropolitan areas, and in rural Illinois.

The Commission's decision not to accept for filing any new applications or major modifications in any of the MAS bands starting July 1, 1999, and continuing for an indefinite period of time, will have a serious adverse effect on CellNet and its customers.⁶ In order for CellNet to expand its service offerings with its current utility customers and provide services to future customers, it requires continued access to spectrum in the 928/952 MHz MAS bands. The purpose of this request is to seek relief from the application freeze near Minneapolis, MN and in North Dakota, where there is an immediate need for expansion of MAS coverage to meet customer commitments agreed to before the imposition of the freeze.

II. GRANT OF THE REQUESTED RELIEF IS SUPPORTED BY GOOD CAUSE SHOWN

While the application freeze imposed by the *MAS Further Notice* does not constitute a formal Commission "rule," it clearly is a procedural requirement mandated by the Commission. As such, the Commission has the discretion under its rules to treat this petition for relief as an informal request for relief under § 1.41 or a request for waiver under § 1.925.

Of the three potential avenues for relief, the standards for waiver are the most rigorous and clearly defined. Section 1.925 of the Commission's rules authorizes the Commission to grant a request for waiver if it is shown that either (1) the underlying purpose of the rule would not be served

⁶ There has been a MAS freeze in place since February 19, 1997 on the acceptance of MAS applications in the 932/941 MHz bands, the 928/959 MHz bands, and applications to provide subscriber-based service in the 928/952/956 MHz bands. See *Amendment of the Commission's Rules Regarding Multiple Address Systems*, WT Docket No. 97-81, *Notice of Proposed Rule Making*, 12 FCC Rcd 7973 (1997) ("*MAS Notice*"). Because CellNet's wireless fixed telemetry network utilizes the 928/952 MHz band, is for private internal-use and is not subscriber-based, the Wireless Telecommunications Bureau determined that the 1997 MAS suspension did not apply to CellNet's applications. See *GTECH Corporation, Memorandum Opinion and Order*, 13 FCC Rcd 4290 (Chief, Wireless Telecom. Bur., 1998).

or would be frustrated by application to the instant case, and that a grant of the requested waiver would be in the public interest; or (2) in view of unique or unusual factual circumstances of the instant case, application of the rules would be inequitable, unduly burdensome or contrary to the public interest, or the applicant has no reasonable alternative.⁷ As discussed below, CellNet's request satisfies the Commission's standards for a waiver (or other relief) and should be granted.

A. The Unique Factual Circumstances Associated With CellNet's Pre-existing Customer Commitment Warrant Limited Relief from the MAS Application Suspension

In the Minneapolis/St. Paul metropolitan area, Northern States Power Company serves more than one million residential and commercial customers. In August 1996, NSP and CellNet entered into a 15-year utility services agreement through which CellNet provides remote meter reading services for approximately 1.1 million gas and electric meters within NSP's service territory. Full system deployment, scheduled for completion in 1999, will include approximately 800,000 electric and 300,000 gas customers.

CellNet is currently licensed to operate thirteen MAS stations, mostly centered on the Minneapolis metropolitan area, which enables CellNet to meet its obligations for the 1.1 million meters under contract. However, prior to the application freeze, CellNet and NSP agreed to expand the original contract to cover an additional 850,000 meters, not only in the Minneapolis region but also within the other areas served by NSP, so that NSP can offer the same higher level of service to all of its customers.⁸ In order to meet this pre-existing customer commitment, CellNet must obtain

⁷ 47 C.F.R. § 1.925(b)(3).

⁸ Specifically, CellNet is applying for new MAS station licenses in Burlington, ND, Thompson, ND, Fargo, ND, Albany, MN, and Mankato, MN.

new MAS licenses in order to expand its service area as needed to provide radiofrequency coverage for the additional customer meters. Specifically, the contractual agreement requires CellNet to install 171, 000 meters in areas not presently covered by CellNet's licensed MAS stations by early next year.

B. Granting Limited Relief Will Serve the Public Interest

CellNet's MAS information services promote public safety, provide cost-savings to both utilities and consumers, and encourage efficient use of electricity, gas, and water. As a result of CellNet's network deployments, its utility customers reap many public safety benefits, including reductions in the quantity and duration of outages as well as an enhanced ability to detect outages, fraud, and theft and to verify restoration of service. Furthermore, a certain number of remote radios will be connected to remote terminal units that control mission-critical functions for the utility. A utility's inability to communicate immediately and reliably with power-monitoring points and to operate switches controlling large electric loads presents a hazardous situation for both the utility's workers and its customers.

Another benefit of CellNet's networks includes enabling the utility to access data on daily usage, total usage, and the time of last meter reading, helping the utility to resolve service issues on an expedited basis. Utilities thereby are able to improve their own operational efficiency, a benefit which ultimately will be realized by the business and residential customers of the utility in the form of efficient, cost-saving approaches to monitoring usage. For example, consumers benefit from flexible rate programs designed to help them save money on energy consumption, from energy usage information to help them manage energy costs and to better allocate usage, and from the consolidated billing services and flexible billing dates which the utility can offer through use of

CellNet's information services. Additionally, utility customers no longer need to be subject to estimated bills, but rather can benefit from both highly accurate measurements of energy consumption and data indicating trends in usage that they can use to adjust their usage to off-peak hours for further cost-savings.

In sum, the benefits the utility companies realize from CellNet's information services result in greater efficiency, service enhancements, and safety checks that could serve to bring down their overall costs of providing essential utility services to both residential and business customers. Providing CellNet the limited relief it requests for those geographic areas subject to its pre-existing customer commitment will allow NSP to extend these benefits to more of its end user customers.

C. Granting CellNet the Limited Requested Relief Would Not Undermine the Purpose of the Application Suspension

Generally, the FCC's purpose in adopting an application freeze is to deter speculative applications during the pendency of a rulemaking proceeding to ensure that the goals of the rule making are not compromised during the interim period before adoption of final rules.⁹ The *MAS Further Notice* expanded the pre-existing MAS suspension "due to the uncertainty regarding whether to employ geographic area licensing and auctions for these bands" and "to permit the orderly and effective resolution of the issues in this proceeding."¹⁰ The Commission found that the "suspension is in the public interest because absent such action, applications could limit the effectiveness of the decisions made and the standards developed" and that "this action is consistent with the approach

⁹ See *Revision of Part 22 and Part 90 of the Commission's Rules to Facilitate Future Development of Paging Systems*, WT Docket No. 96-18, *First Report and Order*, 11 FCC Rcd 16570 (1996) ("*Paging First Report and Order*").

¹⁰ *MAS Further Notice* at ¶28.

we have taken in all other existing services where we have proposed to adopt geographic area licensing and auction rules.”¹¹

In granting limited relief to CellNet, the purpose of the MAS application freeze would not be undermined. The applications which CellNet seeks authorization to file are not in the least bit speculative. They are the result of lengthy negotiations, with a highly reputable customer, for the use of tested technology, to extend an existing service offering into geographic areas already served by the customer. Because CellNet takes seriously its responsibilities as a Commission licensee not to “warehouse” spectrum, however, it did not file the applications for these areas months or years before the customer had budgeted for the expansion and actually was ready for deployment.¹² As a result, CellNet has been “caught in the middle” in its efforts to meet existing customer obligations by the entirely unexpected application freeze.

Granting the limited relief to permit CellNet to meet its pre-existing customer commitments would have a minor impact at most on any future determination of MAS rules with regard to geographic area licensing or auctions. To the extent the Commission is concerned about limiting further MAS expansion in order not to thwart the proposed geographic licensing scheme and competitive bidding license assignment procedures, such concerns are not adversely affected in this

¹¹ *Id.* (citing *Revision of Part 22 and Part 90 of the Commission’s Rules to Facilitate Future Development of Paging Systems*, WT Docket No. 96-18, *Notice of Proposed Rule Making*, 11 FCC Rcd 3108, 3136 & n.270 (1996)).

¹² For example, CellNet has taken the lead in attempting to resolve the problem of “squatters” in MAS licensing which have frustrated CellNet’s attempts to acquire new spectrum for non-speculative service requirements on numerous occasions. *See Petition to Show Cause*, filed by CellNet Oct. 9, 1998 (identifying approximately 100 MAS licenses held by a single licensee, never constructed, which should be revoked and made available for re-licensing).

case. For example, two of the proposed sites that are the subject of this petition are located in the vicinity of Minneapolis where MAS spectrum already is heavily encumbered and very little white space is available. Incumbents like CellNet are the only entities that substantially can expand into the available white space and generally can do so only by short-spacing their existing service areas on the frequencies already licensed to them. This is the approach CellNet would take for the sites near Minneapolis so that granting the proposed relief would have no practical effect on any future MAS auction because only CellNet could use the available spectrum for a viable system.

The other three applications for new MAS stations for which CellNet is seeking relief generally are located in comparatively remote areas where there currently is a relative abundance of available MAS frequencies. In fact, as the required frequency coordination reports demonstrate, a total of only six co-channel operators are in the vicinity of any of the proposed stations. Only one co-channel operator is close to the 90-mile separation criteria.¹³ The other five co-channel operators are located at least 33 miles, and up to over 110 miles, beyond the 90-mile radius. Even upon grant of the requested applications for channels in the 928/952 MHz bands, additional spectrum in the 928/952/959 and 932/941 MHz bands will remain available in these areas for potential auction. Grant of this request for relief, and subsequent grant of the related applications, will thus have a very minimal effect on the distribution of MAS spectrum, and no practical effect on the resolution of the issues presented in the *MAS Further Notice*.

In sum, grant of the requested relief would result in only an incremental expansion of MAS spectrum use either into remote areas or into more congested areas that on a practical basis are not

¹³ See § 101.105(c)(3)(i).

available to any entity other than CellNet due to CellNet's incumbency and the required separation criteria. Further, the limited relief sought by CellNet would permit it to apply for licenses only on the same frequency bands and under the same conditions as it has over the past two years while the Commission's initial MAS freeze has been in effect. Most importantly, the authorizations sought by CellNet are directly related to a pre-existing customer commitment for the provision of information services to specific service areas and thus are far removed from the speculative activities which application freezes are intended to deter.

D. CellNet Has No Reasonable Alternative to the 928/952 MHz Frequency Bands Under the Commission's Rules

CellNet has spent years of research and development in designing equipment to operate in the 928/952 MHz MAS bands and has an embedded investment of millions of dollars in its existing networks. The product of these efforts is a highly advanced and novel technology that is unique to the MAS industry and far surpasses any MAS system in terms of spectrum efficiency. The contracts that CellNet has entered into with utilities are based on CellNet's use of this technology in this particular spectrum band.

In order for CellNet to use a spectrum alternative to MAS frequencies, CellNet would need to expend time-consuming re-design efforts and great expense in order to develop equipment to operate in other bands. The design challenges to ensure that the MAS portion of the system is compatible with the new spectrum would be formidable. Not only would such an undertaking be difficult at best in the long run, it is not even a possible option for the immediate needs of the NSP deployment. In practical effect, no other spectrum alternatives are available for CellNet to expand

its networks and meet its existing customer commitments with NSP scheduled for roll out early next year.¹⁴

E. Grant of the Requested Relief Would Be Consistent With Past Situations in Which The Commission Has Granted Relief from Application Freezes

The limited relief sought by CellNet is supported by ample precedent. The Commission previously has recognized that application freezes sometimes result in an adverse impact on the affected industries. In fact, the Commission has gone so far as to lift an entire freeze within a very brief time period following its implementation.¹⁵ In other cases, the Commission has granted limited relief from an application freeze similar to that requested by CellNet so as not to impair the ability of certain incumbent licensees to operate effectively.

¹⁴ The option of using the facilities of unaffiliated commercial service providers (assuming that commercial service is even available in the subject areas) would be cost-prohibitive and thus, inconsistent with one of the hallmarks of CellNet's information services: that is, that the per-meter cost is kept low due to the efficiencies CellNet gains from the use of its MAS technology to read millions of endpoints. No other provider employs the unique CellNet technology. Furthermore, use of third-party providers would raise issues of network reliability and control, other hallmarks of the critical public safety functions provided by CellNet.

¹⁵ For example, in issuing a *Notice of Proposed Rule Making* involving the potential auction of private carrier paging ("PCP") systems operating in the 929-930 MHz band, the Commission imposed an immediate freeze on all 900 MHz applications. *One week later*, the Commission already had become aware of the adverse impact of the freeze and lifted the freeze in its entirety, stating "the freeze is impairing the ability of some PCP operators to develop or expand their systems based on plans formulated prior to adoption of the Notice. As a result, the freeze may inadvertently be stranding investment in ongoing projects while delaying the ultimate provision of paging service to prospective customers." *See Amendment of the Commission's Rules to Provide Channel Exclusivity to Qualified Private Paging Systems at 929-930 MHz*, PR Docket No. 93-35, *Order*, 8 FCC Rcd 2460, 2460 (1993).

For example, very much like the MAS proceeding, the Commission suspended new paging applications when it proposed to convert from site-by-site licensing to geographic licensing.¹⁶ Essentially, incumbents were precluded from expanding existing interference contours on a primary basis. Just over two months later, however, the Commission granted significant relief from the freeze, as it recognized that an across-the-board freeze imposed “significant costs on legitimate paging licensees with operating systems.”¹⁷ The Commission added that “[t]o meet customer needs and improve service to the public . . . paging operators need flexibility not only to make modifications within their existing service areas, but to add sites that extend the coverage of their systems into areas of new growth, such as outlying suburbs and new business centers.”¹⁸ The Commission resumed accepting applications for proposed transmission sites near an authorized site on a primary basis for incumbent paging licensees, stating that “such an approach provides established incumbents with the ability to expand their systems incrementally in response to consumer demand, while precluding filings by speculators who either have no prior authorizations or who may have authorizations but have not constructed an operational system.”¹⁹

Similarly, in February 1999 the Commission released an *Order* in IB Docket No. 98-172 granting a request for relief and effectively changing the proposed cut-off date for co-primary status for new terrestrial fixed service (“FS”) authorizations in the 18.3-18.55 GHz band from the release

¹⁶ *Revision of Part 22 and Part 90 of the Commission’s Rules to Facilitate Future Development of Paging Systems*, WT Docket No. 96-18, *Notice of Proposed Rule Making*, 11 FCC Rcd 3108 (1996).

¹⁷ *Paging First Report and Order*, 11 FCC Rcd at 16581.

¹⁸ *Id.*

¹⁹ *Id.* at 16583.

date of the *Notice of Proposed Rulemaking* to the release date of a future *Report and Order* in the proceeding.²⁰ The Commission granted relief, which was limited to private cable operators (“PCOs”) operating in the band, based primarily on the following factors: the lack of other spectrum available, even on an interim basis, to accommodate either new or existing PCO operations seeking to expand; the Commission’s goal of increased competition in the provision of new video services; and the threat to existing investment made by PCOs caused by a lack of new spectrum.

The Commission also expressly has taken into account pending customer commitments in implementing the effective date of a freeze. In 1991, the Commission adopted a policy allowing interchange carriers (“IXCs”) to offer services pursuant to tariffs reflecting individually negotiated contracts. Because, however, it found that AT&T had the ability to leverage its market power in toll-free inbound services to gain a competitive advantage over other IXCs, the Commission prohibited AT&T from filing after August 1, 1991 (the date of the Commission’s decision) any contract-based tariffs that included a toll-free inbound service.²¹ The Commission first extended the cut-off date in recognition that lengthy negotiations between the carrier and its customers typically were required before the filing of a contract-tariff and that “denying these customers the opportunity to reap the fruits of their negotiations would be unduly harsh and unfair.”²² The Commission found that relief

²⁰ *Redesignation of the 17.7-19.7 GHz Frequency Band, Blanket Licensing of Satellite Earth Stations in the 17.7-20.2 GHz and 27.5-30.0 GHz Frequency Bands, and the Allocation of Additional Spectrum in the 17.3-17.8 GHz and 24.75-25.25 GHz Frequency Bands for Broadcast Satellite Service Use*, IB Docket No. 98-172, *Order*, 14 FCC Rcd 3086 (1999).

²¹ *Competition in the Interstate Interexchange Marketplace*, CC Docket No. 90-132, *Report and Order*, 6 FCC Rcd 5880, 5906 (1991).

²² *Competition in the Interstate Interexchange Marketplace*, CC Docket No. 90-132, (continued...)

limited to pending customer commitments “is consistent with our goal of avoiding customer disruption and will not significantly affect competition in the marketplace or undermine the policy concerns underlying [the freeze].”²³ On further reconsideration, the Commission extended the cut-off date another seven months and “grandfathered” customers based on the status of their negotiations in order to “protect the expectancy interests of customers.”²⁴

Grant of CellNet’s request for limited relief from the MAS application freeze is warranted on the same terms. As demonstrated above, CellNet is an experienced incumbent MAS licensee employing unique technology designed exclusively for the 928/952 MHz band and is seeking limited relief in order to meet the needs of its pre-existing customer, NSP, by adding sites that extend coverage to more areas of NSP’s service territory. CellNet has no spectrum alternative to meet its near-term commitments to NSP and already has made a significant investment in the MAS networks being deployed for NSP. CellNet’s commitment with NSP to expand into additional areas was formulated prior to the freeze taking effect. Absent the requested relief, CellNet’s ability to provide cost-effective, value-added meter reading and other information services to NSP for the affected areas will be significantly delayed, adversely affecting NSP and, indirectly, NSP’s customers. Under these unique circumstances, ample precedent supports Commission grant of the instant petition.

²² (...continued)
Memorandum Opinion and Order, 6 FCC Rcd 7569, 7569 (1991).

²³ *Id.*

²⁴ *Competition in the Interstate Interexchange Marketplace*, CC Docket No. 90-132, *Memorandum Opinion and Order on Reconsideration*, 7 FCC Rcd 2677, 2682 (1992).

III. CONCLUSION

CellNet respectfully requests that the Commission grant it immediate limited relief from the MAS application suspension in order to supplement existing coverage areas and thus meet pre-existing customer commitments. CellNet emphasizes that it is applying for new MAS licenses only in those areas where it has the most immediate need, projected over the course of six to eight months. CellNet carefully is tailoring its request for relief with the expectation that by the end of this six to eight month time period, either the application freeze will be lifted and/or the MAS licensing issues will be resolved. Waiver of the suspension is justified in view of CellNet's unique factual circumstances, the fact that application of the MAS suspension to CellNet would be inequitable, unduly burdensome and contrary to the public interest, and that CellNet has no reasonable alternative under the Commission's rules. For the reasons described above, grant of the petition would serve the public interest, would not undermine the purpose of the suspension, and would be consistent with past Commission actions in similar circumstances.

Respectfully submitted,

CELLNET DATA SYSTEMS, INC.



By: Lawrence J. Movshin
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August 17, 1999

APPENDIX

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August 17, 1999

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Re: CN Frequency (MSP), Inc.
Application for New MAS Station in Burlington, North Dakota

Dear Sir/Madam:

CN Frequency (MSP), Inc. ("Applicant"), by its attorneys, hereby submits for filing an original and one copy of an FCC Form 415 application for a new MAS station in Burlington, North Dakota, at 952/928.25625 MHz. The application is accompanied by a Form 159 and a check made payable to the Federal Communications Commission in the amount of \$320.00 for the prescribed filing fee (Fee Code PEOR).

Applicant notes that its parent company, CellNet Data Systems, Inc., is simultaneously filing a "Petition for Expedited Relief from MAS Application Freeze Limited to a Single Customer Commitment," a copy of which is attached. Therefore, Applicant requests that the Commission process the subject application in light of the pending petition, notwithstanding the application freeze imposed in WT Docket Number 97-81.¹

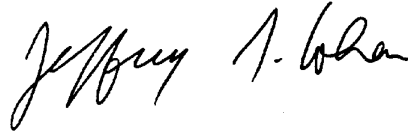
¹ *Amendment of the Commission's Rules Regarding Multiple Address Systems*, WT Docket No. 97-81, *Further Notice of Proposed Rule Making and Order*, FCC 99-101 (rel. July 1, 1999) ("MAS Further Notice").

Applicant notes that its use of the subject MAS station will be for private, internal communications, and no "subscriber-based" services will be offered.

Should you have any questions regarding this application, please contact the undersigned.

Sincerely,

WILKINSON BARKER KNAUER, LLP

A handwritten signature in black ink, appearing to read "Jeffrey S. Cohen". The signature is fluid and cursive, with the first name "Jeffrey" being more prominent than the last name "Cohen".

By: Jeffrey S. Cohen
Ray M. Rothermel Jr.

Enclosures

ADMINISTRATIVE INFORMATION

28. The purpose of this filing is to: <div style="text-align: center; font-size: 1.5em; margin: 10px 0;">(A)</div> Enter one or more letters that correctly describes the purpose of this filing.	<table style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 20px; text-align: center; vertical-align: top;"> A B C D E F G H I J </td> <td style="padding-left: 10px;"> request an initial authorization for a new station (all) request authorization for modification of an existing licensed station (all) request authorization for a minor modification (Private and Common Carrier) request authorization to renew an existing licensed station (all) request authorization to reinstate an expired licensed station (all) request a full assignment of a radio station authorization (Private) request authorization of a developmental station (Private and Common Carrier) request authorization for transfer of control (Private) request authorization to convert from Private to Common Carrier (Common Carrier) request amendment to a pending application (all) </td> </tr> </table>	A B C D E F G H I J	request an initial authorization for a new station (all) request authorization for modification of an existing licensed station (all) request authorization for a minor modification (Private and Common Carrier) request authorization to renew an existing licensed station (all) request authorization to reinstate an expired licensed station (all) request a full assignment of a radio station authorization (Private) request authorization of a developmental station (Private and Common Carrier) request authorization for transfer of control (Private) request authorization to convert from Private to Common Carrier (Common Carrier) request amendment to a pending application (all)
A B C D E F G H I J	request an initial authorization for a new station (all) request authorization for modification of an existing licensed station (all) request authorization for a minor modification (Private and Common Carrier) request authorization to renew an existing licensed station (all) request authorization to reinstate an expired licensed station (all) request a full assignment of a radio station authorization (Private) request authorization of a developmental station (Private and Common Carrier) request authorization for transfer of control (Private) request authorization to convert from Private to Common Carrier (Common Carrier) request amendment to a pending application (all)		
29. If this filing is for modification of an existing licensed station, or is for a partial assignment of authorization, specifically describe changes requested. 			
30. Number of associated applications filed as a system	31. FCC File Numbers of associated applications filed as a system, if known		
32. Type of MAS Operation (T, S, U) See Exhibit 1	<table style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 50%; vertical-align: top;"> <u>Two-way master-remote</u> <u>One-way outbound</u> <u>One-way Inbound</u> </td> <td style="width: 50%; vertical-align: top;"> <u>Mobile meter reader</u> <u>Subfrequency operation</u> <u>Multiple master operation</u> </td> </tr> </table>	<u>Two-way master-remote</u> <u>One-way outbound</u> <u>One-way Inbound</u>	<u>Mobile meter reader</u> <u>Subfrequency operation</u> <u>Multiple master operation</u>
<u>Two-way master-remote</u> <u>One-way outbound</u> <u>One-way Inbound</u>	<u>Mobile meter reader</u> <u>Subfrequency operation</u> <u>Multiple master operation</u>		
33. Requested Authorization Expiration Date <div style="display: flex; justify-content: space-between;"> Month Day </div>			

POINT OF CONTACT FOR TECHNICAL OPERATIONS

34. Mailing address street or geographical description Ben H. Lyon, 125 Shoreway Road	35. Voice Telephone Number (650) 508-6000
36. City San Carlos	37. State CA
38. Zip code 94070	

BROADCAST AUXILIARY APPLICANTS

39. Name of Broadcast Auxiliary frequency coordinator	40. Voice Telephone Number ()
41. Call Sign of associated Broadcast Station, if any	42. Radio Service Code of associated Broadcast Station

TRANSFER OF CONTROL APPLICANTS

43. Is this a pro forma Transfer of Control?	() <u>Yes</u> <u>No</u>
44. Is each station named in item 27 of this filing constructed and operational?	() <u>Yes</u> <u>No</u>
45. Name of Transferee	
46. Transferee's Mailing Address, Street	
47. City	48. State
49. Zip code	

ENVIRONMENTAL POLICY

50. Would a Commission grant of any proposal in this application or amendment have a significant environmental effect as defined by 47 CFR 1.1307? • If "yes", attach environmental assessment as required by 47 CFR 1.1308 and 47 CFR 1.1311.	(<input type="checkbox"/>) <u>Yes</u> <u>No</u>
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FOREIGN GOVERNMENT REPRESENTATION

51. Is the applicant a foreign government or the representative of any foreign government?	(<input type="checkbox"/>) <u>Yes</u> <u>No</u>
--	---

COMMON CARRIER APPLICANTS - ALIEN OWNERSHIP

52. Is the applicant an alien or the representative of an alien?*	(<input type="checkbox"/>) <u>Yes</u> <u>No</u>
53. Is the applicant a corporation organized under the laws of any foreign government?*	(<input type="checkbox"/>) <u>Yes</u> <u>No</u>
54. Is the applicant a corporation of which any officer or director is an alien or of which more than one-fifth of the capital stock is owned of record or voted by aliens or their representatives or by a foreign government or representative thereof or by any corporation organized under the laws of a foreign country?	(<input type="checkbox"/>) <u>Yes</u> <u>No</u>
55. Is the applicant a corporation directly or indirectly controlled by any other corporation of which any officer or more than one-fourth of the directors are aliens, or of which more than one-fourth of the capital stock is owned of record or voted by aliens, their representatives, or by a foreign government or representative thereof, or by any corporation organized under the laws of a foreign country? • If "yes", attach exhibit explaining nature and extent of alien or foreign ownership or control.	(<input type="checkbox"/>) <u>Yes</u> <u>No</u>

*If yes, attach exhibit explaining circumstances.


BASIC QUALIFICATIONS

(To be completed by Private Operational Fixed and Common Carrier applicants only.)

56. Has the applicant or any party to this application or amendment had any FCC station authorization, license or construction permit revoked or had any application for an initial, modification or renewal of FCC station authorization, license, construction permit denied by the Commission?	(<input type="checkbox"/>) <u>Yes</u> <u>No</u>
57. Has the applicant, or any party to this application or amendment, or any party directly or indirectly controlling the applicant ever been convicted of a felony by any state or federal court?	(<input type="checkbox"/>) <u>Yes</u> <u>No</u>
58. Has any court finally adjudged the applicant, or any person directly or indirectly controlling the applicant, guilty of unlawfully monopolizing or attempting unlawfully to monopolize radio communication, directly or indirectly, through control of manufacture or sale of radio apparatus, exclusive traffic arrangement or any other means or unfair methods of competition?	(<input type="checkbox"/>) <u>Yes</u> <u>No</u>
59. Is the applicant, or any person directly or indirectly controlling the applicant, currently a party in any pending matter referred to in the preceding two items?	(<input type="checkbox"/>) <u>Yes</u> <u>No</u>
60. Is this a Common Carrier corporation ? If "Yes", attach exhibit showing names, addresses and citizenship of those stockholders owning of record and/or voting 10 percent or more of the filer's voting stock and the percentages so held. In the case of fiduciary control, indicate the beneficiary(ies) or class of beneficiaries. Also list the names and addresses of the officers and directors of the applicant as well as any controlling corporations. If this information is currently up to date and on file with the Commission, this additional exhibit is not required with this filing.	(<input type="checkbox"/>) <u>Yes</u> <u>No</u>

* If "yes", attach exhibit explaining circumstances.

CERTIFICATION

<p>The APPLICANT waives any claim to the use of any particular frequency or of the electromagnetic spectrum as against the regulatory power of the United States because of the previous use of the same, whether by license or otherwise, and requests an authorization in accordance with this application. The applicant certifies that neither the applicant nor any other party to the application* is subject to a denial of Federal benefits, that includes FCC benefits, pursuant to Section 5301 of the Anti-Drug Abuse Act of 1988, 21 U.S.C., Section 862, because of a conviction for possession or distribution of a controlled substance. All statements made in exhibits are a material part hereof and are incorporated herein as if set out in full in this application. The undersigned, individually and for the applicant, hereby certifies that all statements made in this application and in all attached exhibits are true, complete and correct to the best of his or her knowledge and belief, and are made in good faith.</p> <p>*See 47 CFR 1.2002(b) for the meaning of "party to the application" for these purposes.</p>			
61. Typed Name of Person Signing BEN H. LYON	62. Title VICE PRESIDENT		
63. Signature 	64. Date 8/16/99		
WILLFUL FALSE STATEMENTS MADE ON THIS FORM ARE PUNISHABLE BY FINE AND/OR IMPRISONMENT (U.S. Code, Title 18, Section 1001), AND/OR REVOCATION OF ANY STATION LICENSE OR CONSTRUCTION PERMIT (U.S. Code, Title 47, Section 312(a)(1)), AND/OR FORFEITURE (U.S. Code, Title 47, Section 503).			

FCC
415
Schedule A

APPLICATION FOR AUTHORIZATION IN THE MICROWAVE SERVICES
Transmit Site Data

A1. Action requested (<u>N</u>) <u>New Site</u> <u>Modify</u>	A2. Station class <u>FXO</u>	A3. Site name <u>Burlington, ND</u>
A4. Service area or SMSA		

TRANSMIT LOCATION

FIXED POINT, TEMPORARY, OR MOBILE

A5. Street address or other geographic description of fixed location <u>various locations within a 35 mile radius</u>		
A6. City <u>Burlington</u>		
A7. County <u>Ward</u>		
A8. State <u>North Dakota</u>	A9. Ground elevation AMSL (feet) <u>varies</u>	A10. Overall height of antenna structure (feet) <u>20</u>
A11. Latitude (DD-MM-SS.S) <u>48</u> ° <u>15</u> ' <u>32</u> "	A12. Longitude (DDD-MM-SS.S) <u>101</u> ° <u>25</u> ' <u>08</u> "	A13. North American Datum (NAD) <u>(2)</u> <u>27</u> <u>83</u>
A14. Maximum Latitude (DD-MM-SS.S) ____ ° ____ ' ____ "	A15. Maximum Longitude (DDD-MM-SS.S) ____ ° ____ ' ____ "	A16. Temporary or Mobile Radius of Operation (miles)
A17. Wide area operations <u>()</u> <u>Nationwide</u> <u>Continental United States</u>		

TRANSMIT ANTENNA STRUCTURE INFORMATION

A18. If antenna will be mounted on an antenna structure which has been registered with the Commission, give the seven digit Registration Number. ()	
IF REGISTRATION NUMBER IS ENTERED IN ITEM A 18, DO NOT COMPLETE ITEMS A 19 - 23.	
A19. Has the owner of the antenna structure filed an FCC Form 854, Application for Antenna Structure Registration with the Commission ? (<u>N</u>) <u>Yes</u> <u>No</u>	
A20. If Yes, give date FCC Form 854 was filed with the Commission.	Month () Year ()
A21. Give the Figure Number that best describes your antenna arrangement .	(<u>1</u>) <u>1</u> <u>2</u> <u>3</u>
A22. Give the type of antenna structure on which your antenna will be mounted. <u>pole</u> <u>o</u>	
A23. Give the height of the antenna supporting structure, shown in feet. <u>20</u>	

FCC**415**

Schedule B

APPLICATION FOR AUTHORIZATION IN THE MICROWAVE SERVICES

Frequency Data

B1. Transmit Site (48-15-32) Latitude (101-25-08) Longitude	B2. Path Number (1) of this filing.
---	---------------------------------------

MASTER**TRANSMITTER****EXISTING FREQUENCY DATA****PROPOSED FREQUENCY DATA**

B3. Frequency (MHz)		952.25625
Additional Frequency (MHz)		SEE EXHIBIT 1
Additional Frequency (MHz)		
Additional Frequency (MHz)		
Additional Frequency (MHz)		
Additional Frequency (MHz)		
Additional Frequency (MHz)		
Additional Frequency (MHz)		
Additional Frequency (MHz)		
Additional Frequency (MHz)		
Additional Frequency (MHz)		
Additional Frequency (MHz)		
Additional Frequency (MHz)		
Additional Frequency (MHz)		
Additional Frequency (MHz)		
B4. Emission Designator		12K5D1D / 1K2QD1D
Additional Emission Designator		SEE EXHIBIT 1
Additional Emission Designator		
Additional Emission Designator		
B5. Tx Manufacturer		CellNet Data Systems, Inc.
B6. Tx Type Acceptance Number		H6N-CCM-92-STD
B7. Tolerance (%)		0.0001
B8. Tx Power Output watts		5 WATTS
B9. Baseband Signal Type		DIG
B10. Maximum Channel Capacity		2400 bits/second
B11. Digital Modulation Rate		1200 Hz
B12. Digital Modulation Type		9QPR
B13. Effective Isotropic Radiated Power (dBm)		46
B14. Automatic Transmitter Power Control?	() Yes No	(N) Yes No
B15. Tx Line Loss (dB)		Varies
B16. Receiver Line Loss (dB)		Varies
B17. Median Receiver Signal Level (dBm)		-84

**FCC
415****APPLICATION FOR AUTHORIZATION IN THE MICROWAVE SERVICES**

Schedule C

Path DataC1. Purpose of filing (A) Add new Path Delete Path Modify Path No Changes to Existing Path DataC2. Transmit site (48-15-32) Latitude (101-25-08) LongitudeC3. Path Number (1) of this filing.**MASTER**

TRANSMIT ANTENNA	EXISTING PATH DATA	PROPOSED PATH DATA
C4. Height to center of final radiating element (ft)		varies
C5. Antenna manufacturer		varies
C6. Antenna model number		varies
C7. Antenna gain		10 dBi
C8. Beamwidth (degrees)		360
C9. Polarization		H/V
C10. Azimuth to Rx site or passive repeater		varies
C11. Elevation angle		varies
C12. Diversity Tx antenna height (ft)		
C13. Diversity Tx antenna manufacturer		
C14. Diversity Tx antenna model number		
C15. Diversity Tx antenna gain		
C16. Diversity Tx beamwidth (degrees)		
C17. Tx periscope reflector dimensions (ft)	() Height () Width	() Height () Width
C18. Tx periscope reflector separation (ft)		

FINAL RECEIVER	EXISTING PATH DATA	PROPOSED PATH DATA
C19. Receiver site name		
C20. Call Sign		
C21. Latitude		varies
C22. Longitude		varies
C23. Ground elevation (ft)		varies
C24. Does path include a passive repeater?	() <u>Yes</u> <u>No</u>	(<u>N</u>) <u>Yes</u> <u>No</u>
C25. Height to center of Rx antenna (ft)		varies
C26. Rx antenna manufacturer		varies
C27. Rx antenna model number		varies
C28. Rx antenna gain		12.2/5.2 dBi
C29. Diversity Rx antenna height		
C30. Diversity Rx antenna manufacturer		
C31. Diversity Rx antenna model number		
C32. Diversity Rx antenna gain		
C33. Rx periscope reflector dimensions (ft)	() Height () Width	() Height () Width
C34. Rx periscope reflector separation		

FCC**415**

Schedule B

APPLICATION FOR AUTHORIZATION IN THE MICROWAVE SERVICES

Frequency Data

B1. Transmit Site (48-15-32) Latitude (101-25-08) Longitude

B2. Path Number (2) of this filing.

REMOTES**TRANSMITTER****EXISTING FREQUENCY DATA****PROPOSED FREQUENCY DATA**

B3. Frequency (MHz)		928.25625
Additional Frequency (MHz)		SEE EXHIBIT 1
Additional Frequency (MHz)		
Additional Frequency (MHz)		
Additional Frequency (MHz)		
Additional Frequency (MHz)		
Additional Frequency (MHz)		
Additional Frequency (MHz)		
Additional Frequency (MHz)		
Additional Frequency (MHz)		
Additional Frequency (MHz)		
Additional Frequency (MHz)		
Additional Frequency (MHz)		
Additional Frequency (MHz)		
Additional Frequency (MHz)		
B4. Emission Designator		12K5D1D / 1K20D1D
Additional Emission Designator		SEE EXHIBIT 1
Additional Emission Designator		
Additional Emission Designator		
B5. Tx Manufacturer		CellNet Data Systems, Inc.
B6. Tx Type Acceptance Number		H6N-CRR-96-STD
B7. Tolerance (%)		0.0001
B8. Tx Power Output watts		1 WATT
B9. Baseband Signal Type		DIG
B10. Maximum Channel Capacity		2400 bits/second
B11. Digital Modulation Rate		1200 Hz
B12. Digital Modulation Type		9QPR
B13. Effective Isotropic Radiated Power (dBm)		41
B14. Automatic Transmitter Power Control?	() Yes No	(N) Yes No
B15. Tx Line Loss (dB)		Varies
B16. Receiver Line Loss (dB)		Varies
B17. Median Receiver Signal Level (dBm)		-70.7

**FCC
415****APPLICATION FOR AUTHORIZATION IN THE MICROWAVE SERVICES**

Schedule C

Path DataC1. Purpose of filing (**A**) Add new Path Delete Path Modify Path No Changes to Existing Path DataC2. Transmit site (**48-15-32**) Latitude (**101-25-08**) Longitude C3. Path Number (**2**) of this filing.**REMOTES**

TRANSMIT ANTENNA	EXISTING PATH DATA	PROPOSED PATH DATA
C4. Height to center of final radiating element (ft)		varies
C5. Antenna manufacturer		varies
C6. Antenna model number		varies
C7. Antenna gain		12.2/5.2 dBi
C8. Beamwidth (degrees)		54/360
C9. Polarization		H/V
C10. Azimuth to Rx site or passive repeater		varies
C11. Elevation angle		varies
C12. Diversity Tx antenna height (ft)		
C13. Diversity Tx antenna manufacturer		
C14. Diversity Tx antenna model number		
C15. Diversity Tx antenna gain		
C16. Diversity Tx beamwidth (degrees)		
C17. Tx periscope reflector dimensions (ft)	() Height () Width	() Height () Width
C18. Tx periscope reflector separation (ft)		

FINAL RECEIVER	EXISTING PATH DATA	PROPOSED PATH DATA
C19. Receiver site name		
C20. Call Sign		
C21. Latitude		varies
C22. Longitude		varies
C23. Ground elevation (ft)		varies
C24. Does path include a passive repeater?	() <u>Yes</u> <u>No</u>	(N) <u>Yes</u> <u>No</u>
C25. Height to center of Rx antenna (ft)		varies
C26. Rx antenna manufacturer		varies
C27. Rx antenna model number		varies
C28. Rx antenna gain		10 dBi
C29. Diversity Rx antenna height		
C30. Diversity Rx antenna manufacturer		
C31. Diversity Rx antenna model number		
C32. Diversity Rx antenna gain		
C33. Rx periscope reflector dimensions (ft)	() Height () Width	() Height () Width
C34. Rx periscope reflector separation		